

LOWERRE & FREDERICK

ATTORNEYS AT LAW
44 East Avenue, Suite 100
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
Mail@LF-LawFirm.com

2007 AUG 13 PM 4:40

CHIEF CLERKS OFFICE

August 13, 2007

Ms. LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711

Via hand-delivery

Re: In the matter of the application by Aqua Utilities, Inc., for Texas Pollution
Discharge Elimination System Permit No. WQ0013989001, TCEQ Docket No.
2006-1629-MWD.

Dear Ms. Castañuela,

Enclosed for filing please an original and eleven copies of the Reply of
Wimberley Neighbors for Healthy Water to Responses to Its Hearing Request, in the
above-referenced matter.

If you have any questions please call.

Sincerely,

Richard Lowerre,

Richard Lowerre

*by EOF
w/ permission*

Enclosures

CC: Service List

TCEQ DOCKET NO. 2006-1629-MWD

2007 AUG 13 PM 4:40

APPLICATION OF BY AQUA
UTILITIES INC.
PERMIT NO. WQ0013989001

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BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**REPLY OF WIMBERLEY NEIGHBORS FOR HEALTHY WATER
TO RESPONSES TO ITS HEARING REQUEST**

COMES NOW, Wimberley Neighbors for Healthy Water ("WNHW") and files this, its
reply to responses to its hearing request.

I. SUMMARY

WNHW agrees with most aspects of the responses of the Executive Director ("ED") and
the Office of Public Interest Counsel ("OPIC").

WNHW disagrees with the proposals of the ED and OPIC for the duration of the hearing.
WNHW respectfully requests a 10 month hearing, given the complexity of the issues, the time
already provided Applicant to prepare, and the lack of any need for an expedited hearing.

WNHW agrees that the issues recommended for referral by OPIC and the ED should be
referred. WNHW, however, disagrees with some recommendations of the ED on issues, more
specifically, WNHW disagrees that Issues listed as 1-3, 5, 9, 11, 12 and 15 are not referable due
to lack of relevance or other reasons. The issues are relevant to the larger issues of compliance
history, Applicant's ability to operate and meet permit standards, and the proper design of the
facility.

II. DURATION OF HEARING

As the ED has explained, the application in this matter was filed almost 7 years ago. The
base permit expired in 2001. Yet, the Executive Director and OPIC have recommended, without
any stated basis, a 6 month hearing.

While the Commission has stated in the past its timeline for a hearing in a referral is not a hard deadline, the ALJs at SOAH treat them as such. It is very rare that a deadline on completion of a hearing is extended, except by agreement of all parties.

Thus, WNHW requests a 10 month hearing for the following reasons, with the ability of the ALJs to set a shorter period or the parties to negotiate a shorter schedule if that is appropriate.

The delay in this matter and the complexity of the issues involved justify a longer duration from the beginning. For example, as discussed below, it is not even clear how the 5 year period will be determined for the compliance history and what other compliance problems can be considered to support WNHW's position that the renewal should be denied or the permit altered significantly because of the long history of callous disregard for the law and TCEQ rules at this facility.

Moreover, it is extremely difficult for Protestants such as WNHW, a small non-profit landowners organization, to hire experts, complete discovery, and prepare prefiled testimony within a 6 month period. On the other hand the Applicant has had many months, if not years, to prepare its case.

After the application was filed, WNHW proceeded with extensive research into the compliance history, operational problems, soil conditions, irrigation rates, etc. Because of the length of delay in this matter, all the work of WNHW will now have to be redone. Given the delay and changes in the application, it is unreasonable to expect WNHW to have continued to update and work on this matter over the 7 years this application has been pending. WNHW has been properly waiting until there is final indication that the matter will be considered and that the hearing request of WNHW will be granted to begin its work again.

Neither the Applicant nor the Executive Director has indicated any need for a fast hearing. Thus, a larger duration for the hearing is requested.

III. ISSUES FOR REFERRAL

WNHW disagrees with the position of OPIC that only the three issues it proposed should be referred. OPIC's position, together with that of the Executive Director and the recommendations below, provide a proper and fuller referral. A proper characterization of the issues for referral should be developed based on the issues raised in the comments of WNHW.

WNHW disagrees with the ED's position that the issues listed by the ED as 1, 2, 3, 5, 9, 11, 12 and 15 can not or should not be referred to SOAH because they are not relevant, material, or otherwise referable. These issues are relevant to the three larger issues recommended by OPIC including the issue of compliance history. WNHW recommends that the issue of compliance history be referred with all related aspects that may include issues rejected by the ED. WNHW also requests that the issues listed above be referred to SOAH on their own as they are within the scope of the larger issue of the design of the facility, which is relevant, given the extensive period of time that this application has been pending, the changes made to the design and operations from those originally authorized, and to the changes in information regarding operations over the 8 or more years since the current permit for this facility was issued.

Of particular concern to WNHW is how the compliance issue is referred. As can be seen from the extensive compliance history data attached to the comments and hearing requests, the compliance problems are extensive. Moreover, because of the timing of this application and the delay in processing compliance history, considerations should include the periods from before the application was filed through the end of the hearing.

IV. PRAYER

For the reasons stated above, WNHW respectfully prays that the Commission grant the hearing request of WNHW and refer the matter to SOAH for a hearing of 10 months and referring issues 1 – 25, with the exceptions of issues 17, 21, & 24.

Respectfully Submitted,

LOWERRE & FREDERICK

44 East Ave, Suite 100

Austin, TX 78701

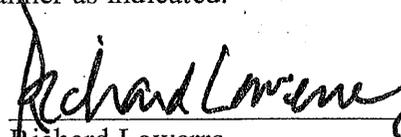
Tel. (512) 469-6000

Fax (512) 482-9346

Richard Lowerre, by POB
Richard Lowerre
TSB#12632900
WI PERMISSION

Certificate of Service

I, Richard Lowerre, certify that a true and correct copy of the foregoing **Reply of Wimberley Neighbors for Healthy Water to Responses to Its Hearing Request** was sent on this day, the 13th of August, 2007, to the persons below in the manner as indicated.


Richard Lowerre
*by for
w/ permission*

For the Applicant:

Steve Blackhurst, P.E. *via fax/U.S. mail*
Tom Walker
Aqua Utilities, Inc.
1421 Wells Branch Parkway, Ste. 105
Pflugerville, Texas 78660
(512) 670-7625
(512) 989-9891 (fax)

Jeff Goebel *via fax/U.S. mail*
Permit Coordinator
32002 Pattys Lndg.
Magnolia, Texas 77354-6669
(281) 376-0191, ext. 00123
(281) 376-1068 (fax)

For the Executive Director:

Anthony Tatu *via fax/U.S. mail*
Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711
(512) 239-0600
(512) 239-0606 (fax)

For the Office of Public Assistance:

Bridget Bohac *via fax/U.S. mail*
Texas Commission on Environmental
Quality,
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas
(512) 239-4000
(512) 239-4007 (fax)

For Alternative Dispute Resolution:

Kyle Lucas *via fax/U.S. mail*
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-122
P.O. Box 13087
Austin, Texas 78711
(512) 239-4010
(512) 239-4015 (fax)

For the Chief Clerk:

LaDonna Castañuela *via hand-delivery*
Texas Commission on Environmental
Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
(512) 239-3300
(512) 239-3311 (fax)

Requestors:

David H. Glenn *via U.S. mail*
P.O. Box 1089
Wimberley, Texas 78676-1089

Emily Rogers *via fax/U.S. mail*
Bickerstaff, Heath, Pollan & Caroom
816 Congress Ave.
1700 Frost Bank Plaza
Austin, Texas 78701-2442